

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK RUSIA**

**ON THE 29<sup>th</sup> OF JANUARY, 2024**

**WRIT PETITION No. 23297 of 2022**

**BETWEEN:-**

**KAILASH CHANDRA S/O SHRI KANAHAIYALAL, AGED ABOUT 65  
YEARS, OCCUPATION: RETIRED SUB DIVISION NO. 7, PHE INDORE  
DISTRICT INDORE (MADHYA PRADESH)**

**.....PETITIONER**

**(SHRI PRAMOD C. NAIR, LEARNED COUNSEL FOR THE PETITIONER.)**

**AND**

**THE STATE OF MADHYA PRADESH SECRETARY PUBLIC HEALTH  
1. ENGINEERING DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA  
PRADESH)**

**EXECUTIVE ENGINEER PUBLIC HEALTH ENGINEERING  
2. DEPARTMENT SANDHRAM DIVISION. NO. 2. INDORE (MADHYA  
PRADESH)**

**3. DISTRICT TREASURY OFFICER TREASURY, ACCOUNTS AND  
PENSION. DISTRICT INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

**(SHRI RAJWARDHAN GAWDE, LEARNED GOVT. ADVOCATE FOR THE  
RESPONDENTS/STATE.)**

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*This petition coming on for hearing this day, the court passed the  
following:*

**ORDER**

**1. The petitioner has filed the present petition seeking direction to the  
respondents to start giving pension to him.**

**1.1 According to the petitioner, he was initially appointed as Helper in**

Work Charge Establishment on 1.9.1984. Thereafter, he was regularized in contingency services w.e.f. 1.1.2009 on completion of 25 years' service. He was fixed in the pay-scale of Rs.4400-7440/-. He retired from service on attaining the age of superannuation vide order dated 10.10.2016, but no pension is being paid to him despite rendering more than 30 years' service in the Government. Hence, the present petition.

1.2 According to the petitioner, he is entitled to get the pension under the provisions of M.P. (Work Charged and Contingency Paid Employees) Pension Rules, 1979 (hereinafter referred to as “the rules of 1979” for short) as amended w.e.f. 1.4.1981. As per amendment, the petitioner is having qualified period of service which is 6 years or more from 1.1.1974.

2. After notice, the respondents have filed their reply by submitting that the petitioner was regularized in service vide order dated 24.6.2013 and retired from service vide order dated 10.10.2016, therefore, he did not complete 3 years' service as a regular employee in regular pay-scale, hence he is not entitled for pension.

3. Learned counsel for the petitioner has placed reliance over the judgment passed by the Division Bench of this Court in the case of *Rahisha Begum V/s. State of M.P. & others : 2010 (4) MPLJ 332*. The said judgment was challenged by the State by way of SLP before the apex Court and the same has been dismissed on 23.3.2012, therefore, the issue decided in the case of Rahisha Begum has attained finality. He has also placed reliance over the judgment of coordinate Bench of this Court in the case of *Sant Kumar Mishra V/s. State of M.P.* (W.P. No.21362/2015 decided on 11.4.2017).

4. On the other hand, learned Govt. Advocate appearing for the respondents/State opposes the prayer. Learned Govt. Advocate has placed

reliance over the judgment of Full Bench of this Court in the case of ***Mamta Shukla V/s. State of M.P. : 2011 (3) MPLJ 210*** in which the Full Bench has examined the correctness of the judgment passed in the case of Rahisha Begum (supra) and held that an employee is eligible to count his past service as qualifying service in accordance with Rule 6 of the Rules of 1979, if he was appointed in accordance with the provisions of Recruitment Rules of 1977. Learned Govt. Advocate has also placed reliance over the judgment of the apex Court in the case of ***Uday Pratap Thakur V/s. State of Bihar : 2023 SCC OnLine SC 527***.

5. The facts of the case are not in dispute that the petitioner was initially appointed as a daily rated employee in Contingency Paid Establishment. Vide order dated 24.6.2013 on a recommendation of Departmental Scrutiny Committee the petitioner was regularized on the post of Pump Attendant in the pay-scale of Rs.4400-7440 + 1300 Grade Pay against the vacant post. Now, the respondents are counting his service from 24.6.2013 till 10.10.2016 which is less than 3 years for grant of pension under the Rules of 1979.

5.1 As per definition u/s. 2(a) of the Rules of 1979, “contingency paid employee” means a person employed for full time in an office or establishment and who is paid on monthly basis and whose pay is charged to office contingencies excluding the employees who are employed for certain period only in a year. Section 2(c) defines “permanent employee” which means a contingency paid employee or a work-charged employee who has completed fifteen years of service or more on or after 1.1.1974. As per Proviso, the contingency paid employee or a work-charged employee who has attained the age of superannuation on or after 1.4.1981, permanent employee means an employee who has completed 10 years'

service on or after 1.1.1974. Now, the said period of 10 years has been reduced to 6 years. As per Section 3, these Rules of 1979 shall apply to every permanent member of the work-charge and contingency paid employees' service. As per definition given in Section 2(c) the contingency paid employee or a work-charged employee who has completed 15 years' service on or after 1.1.1974 shall be treated as permanent employee. The Proviso applies, if before completion of 10 years' service (now 6 years' service) he retires, then he shall not be treated as permanent employee. In the present case, the petitioner was initially appointed on 1.9.1984 and after completing 15 years' he got the status of permanent employee, although the respondents passed the order in the year 2013. But, as per the definition given in Section 2(c) of the Rules of 1979, he became permanent employee after completion of 15 years' service as contingency paid employee. Therefore, as per Rule 3 of the Rules of 1979, the Rules of 1979 very much applies to the case of the petitioner. As per Rule 4(1), the M.P. New Pension Rules, 1951 will apply to the permanent employee under the Rules of 1979. Rule 5 of the Rules of 1979 prescribes procedure for preparation of pension papers, sanction and payment of pension, etc. Rule 6 provides commencement of qualifying service for calculating the qualifying service of a permanent employee who retires as such, the service rendered w.e.f. 1.1.1959 onwards shall be counted. Even on absorption of a permanent employee against the regular pensionable post, the service rendered w.e.f. 1.1.1959 onwards shall be counted for pension as if such service was rendered in a regular post. Therefore, the service rendered by the contingency paid employee or work-charged employee after the appointment and on completion of 15 years' service, he shall be entitled for pension under the Rules of 1979. In the case of Uday Pratap

Thakur (supra) the apex Court has held that the service rendered as work-charged cannot be counted for the purpose of pension, however, at the same time, after rendering the service as work-charged employee for number of years and thereafter when their services were regularized, they cannot be denied the pension on the ground that they have not completed the qualifying service for pension.

**5.2** So far as the judgment of the Full Bench of this Court in the case of Mamta Shukla (supra) is concerned, it is not the case of the respondents that the appointment of the present petitioner as contingency paid employee was not in accordance with Rule 6 of the Rules of 1979. Now, in view of the judgment passed by the apex Court in the case of Uday Pratap Thakur (supra), the petitioner is entitled for pension.

**6.** Accordingly, this petition is allowed and it stands disposed of. The respondents are directed to pass an appropriate order for grant of pension to the petitioner.

**( VIVEK RUSIA )  
JUDGE**

Alok/-